

FACTUAL HISTORY

In April 2005 appellant, a 60-year-old mechanic, filed an occupational disease claim alleging that he suffered stress as a result of harassment at work.²

OWCP denied appellant's claim, finding that he did not substantiate his allegation of harassment and consequently did not establish, beyond his mere perception, a compensable factor of employment.

Appellant, through his representative, requested reconsideration. In an April 21, 2011 letter, counsel indicated that he was attaching sworn declarations from two parties to corroborate appellant's allegation of error, abuse and unreasonable behavior by the employing establishment. However the two sworn declarations were not received by OWCP.

In a decision dated July 21, 2011, OWCP denied modification of its prior decision. It noted that in addition to an appeal request form, appellant submitted a May 12, 2005 Rights and Responsibilities and Choice of Physician letter, as well as an April 21, 2011 letter from counsel. OWCP found that counsel's arguments were repetitive and failed to provide any new supportive corroborating evidentiary material other than the claimant's prior statements, which had already been reviewed. "In summary, the argument presented with the [April 21, 2011] reconsideration appeal request has already been sufficiently addressed an[d] in effect provides no new and material evidence that would support altering the April 22, 2010 reconsideration decision."

On February 20, 2012 appellant, through counsel, again requested reconsideration. Counsel argued that OWCP had overlooked the evidence he submitted to support his prior request, namely, the two sworn declarations that corroborated appellant's allegation of harassment. He argued that appellant had satisfied his burden of demonstrating that his emotional injury was caused by workplace harassment.

In a decision dated April 18, 2012, OWCP denied appellant's reconsideration request. It explained that it did not receive the two sworn declarations that counsel stated that he had attached to his prior request. As the most recent request neither raised substantive legal questions nor included new and relevant evidence, OWCP found the request to be insufficient to warrant a merit review of appellant's case.

On appeal, counsel argues the merits of the case. He states that the April 18, 2012 decision "has again denied benefits for emotional injuries caused by repeated acts of discrimination and harassment by the [employing establishment]." Counsel argues that benefits should be awarded.

² "I have been harassed, intimidated, called a liar, was told I was dishonest and was told I committed fraud and that's just for starters. Things were written about me in our shop area and some of my coworkers have told others I was committing fraud. Gerald Atkins has made my life a living hell since February 17, 2005 the day I returned to work."

LEGAL PRECEDENT

OWCP may review an award for or against payment of compensation at any time on its own motion or upon application.³ An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by OWCP in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁴

A request for reconsideration must be sent within one year of the date of OWCP's decision for which review is sought.⁵ A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁶

ANALYSIS

Counsel mischaracterizes OWCP's April 18, 2012 decision. That decision did not deny benefits. OWCP denied appellant's February 20, 2012 reconsideration request. It denied reopening his case for a review on the merits. OWCP found that appellant's request did not warrant such reconsideration.

Thus, the only issue the Board may consider is whether OWCP properly denied a merit review of appellant's case. The Board may not decide whether appellant has established a compensable factor of employment or whether the medical evidence is sufficient to establish the element of causal relationship. The Board has no jurisdiction on this appeal to weigh the probative value of the evidence submitted or determine appellant's entitlement to compensation. The Board will decide only whether appellant's February 20, 2012 reconsideration request meets at least one of the three criteria for obtaining reconsideration by OWCP.

In his February 20, 2012 reconsideration request, appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not identify a specific point of law or show how OWCP erroneously applied or interpreted it in denying his claim for compensation.

Appellant did not advance a new and relevant legal argument. He argued that OWCP was incorrect in finding that he failed to provide any new supporting evidence. To the contrary,

³ 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606.

⁵ *Id.* at § 10.607(a).

⁶ *Id.* at § 10.608.

appellant asserted that he had submitted two sworn declarations that stood unrebutted in support of his allegation of harassment. The Board has conducted a limited review of the record to determine if he indeed submitted the declarations, but the record shows no such evidence. In addition to appellant's April 21, 2011 appeal request form, OWCP received a May 12, 2005 letter on employee rights, responsibilities and choice of physician. It also received counsel's April 21, 2011 three-page argument. There were no enclosures.

If the record had shown that OWCP received the sworn declarations but did not consider the evidence in denying modification on July 21, 2011, appellant's argument would be relevant. Regulations provide that OWCP will consider all evidence submitted appropriately.⁷ As OWCP did not receive the evidence, appellant's argument provides no grounds for reversing the April 18, 2012 decision and remanding the case for a merit review.

Counsel arguments concerning the issue of causal relationship and entitlement to benefits are irrelevant because OWCP has not yet accepted a compensable factor of employment.

A claimant may be entitled to a merit review by submitting relevant and pertinent new evidence not previously considered by OWCP, but appellant submitted no evidence to support his February 20, 2012 reconsideration request. He again referred to the sworn declarations but did not submit them.

Accordingly, the Board finds that appellant's February 20, 2012 reconsideration request did not meet any of the requirements of 20 C.F.R. § 10.606. Appellant did not show that OWCP erroneously applied or interpreted a specific point of law. He did not advance a relevant legal argument not previously considered by OWCP. Appellant did not submit relevant and pertinent new evidence not previously considered by OWCP. Pursuant to 20 C.F.R. § 10.608, OWCP properly denied a merit review. The Board will affirm OWCP's April 18, 2012 decision.

CONCLUSION

The Board finds that OWCP properly denied appellant's February 20, 2012 reconsideration request.

⁷ *Id.* at § 10.119.

ORDER

IT IS HEREBY ORDERED THAT the April 18, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 10, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board